

ORDER NO. 1479

UNITED STATES OF AMERICA
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Before Commissioners:

Ruth Y. Goldway, Chairman;
Nanci E. Langley, Vice Chairman;
Mark Acton;
Tony Hammond; and
Robert G. Taub

Competitive Product Prices
Global Expedited Package Services 3 (MC2010-28)
Negotiated Service Agreement

Docket No. CP2012-56

ORDER APPROVING GLOBAL EXPEDITED PACKAGE SERVICES 3
NEGOTIATED SERVICE AGREEMENT

(Issued September 26, 2012)

I. BACKGROUND

The Postal Service seeks to include a new Global Expedited Package Services (GEPS) 3 contract (Agreement) within the GEPS 3 product.¹ For the reasons discussed below, the Commission approves the addition of the Agreement to the GEPS 3 product.

Product description. GEPS customers are small- or medium-sized businesses that mail products directly to foreign destinations using Express Mail International, Priority Mail International, or both. Notice at 4. The Commission added GEPS

¹ Notice of United States Postal Service of Filing a Functionally Equivalent Global Expedited Package Services 3 Negotiated Service Agreement and Application for Non-Public Treatment of Materials Filed Under Seal, September 11, 2012 (Notice). The Notice was filed pursuant to 39 CFR 3015.5.

Contracts to the competitive product list in Docket No. CP2008-5 following consideration of a Postal Service request based on Governors' Decision No. 08-7.² The Commission later approved the addition of GEPS 3 to the competitive product list and designated the agreement filed in Docket No. CP2010-71 as the baseline agreement for assessing the functional equivalency of future agreements.³ *Id.* at 7.

New GEPS 3 Agreement. On September 13, 2012, the Commission issued Order No. 1464 noticing the Postal Service's filing of a new GEPS 3 Agreement, along with supporting data and information.⁴ The Postal Service intends for the Agreement to take effect October 1, 2012, following the expiration of the customer's current agreement on September 30, 2012. Notice at 3. The Agreement expires one year after the effective date. *Id.*

Postal Service representations. The Postal Service asserts that the Agreement is substantially similar to the baseline agreement and shares similar cost and market characteristics. *Id.* It states that Governors' Decision No. 08-7 establishes a pricing formula and classification to ensure that each GEPS contract meets the criteria of 39 U.S.C. § 3633 and related regulations, so the costs of each contract conform to a common description. *Id.* It also states that language proposed for the Mail Classification Schedule (MCS) requires that each GEPS contract must cover its attributable costs. *Id.* The Postal Service asserts that the new Agreement meets the Governors' criteria and thus exhibits cost and market characteristics similar to the previous GEPS contracts. *Id.*

In support of these assertions, the Postal Service describes the Agreement's functional terms as the same as the baseline agreement and states that the benefits are

² Order No. 86, Order Concerning Global Expedited Package Services Contracts, Docket No. CP2008-5, June 27, 2008.

³ Order No. 503, Order Approving Global Expedited Package Services 3 Negotiated Service Agreement, Docket Nos. MC2010-28 and CP2010-71, July 29, 2010.

⁴ Order No. 1464, Notice and Order Concerning Additional Global Expedited Package Services 3 Contract, September 13, 2012.

comparable. *Id.* It therefore states that the new Agreement is functionally equivalent to the baseline agreement and should be added to the GEPS 3 product grouping. *Id.* at 6.

The Postal Service states that prices offered under the agreements may differ based on volume or postage commitments and when the agreement is signed (due to incorporation of updated costing information); however, it contends that these differences do not alter the functional equivalency of the contracts. *Id.* at 4.

The Postal Service asserts that the instant Agreement, like the baseline agreement, fits within the parameters outlined in Governors' Decision No. 08-7, but states that differences include the customer's name and address, the customer's representative, and the signatory, plus other revisions addressing:

- a limitation on Option B to postage payments through a permit imprint using USPS-provided Global Shipping software (Articles 2, 6, 7 (paragraph 7) and 10 (paragraph 3));
- the exception of Flat Rate items from Qualifying Mail (Article 4);
- the addition of requirements for mailings processed with software provided by a USPS-approved PC Postage provider (Article 6 (paragraph 1));
- customs and export requirements (Article 8 (paragraph 3) to Article 9 (paragraph 3) and Article 10 (paragraph 2));
- an option for tendering mail (Article 9 (paragraph 2) and Article 10 (paragraph 2));
- the negotiated minimum revenue commitment (Article 11, (paragraph 1));
- termination pursuant to Article 14 (Article 12);
- a minor revision to the entire agreement and survival (Article 17);
- a reference to PRC docket numbers for Annual Compliance Reports in connection with the possibility of filing confidential information;
- a new Article 21 concerning Intellectual Property, Co-Branding, and Licensing (necessitating renumbering of subsequent articles); and

- limitation of liability (Article 22).

Id. at 4-6.

The Postal Service asserts that these differences do not affect the fundamental service being offered or the fundamental structure of the contract, and claims nothing detracts from the conclusion that the instant Agreement is functionally equivalent in all pertinent respects to the baseline contract. *Id.* at 6. It therefore requests that it be included within the GEPS 3 contract product. *Id.*

II. COMMENTS

The Public Representative filed comments on September 21, 2012.⁵ No other comments were received.

Public Representative's position. The Public Representative addresses functional equivalency and the consistency of the new Agreement with relevant provisions of title 39. With respect to functional equivalency, the Public Representative states that he has reviewed the differences the Postal Service identifies between the baseline agreement and the new Agreement, and agrees with the Postal Service that these differences do not affect the fundamental service the Postal Service is offering or the fundamental structure of the contract. *Id.* at 3.

With respect to the requirements of 39 U.S.C. § 3633, the Public Representative states that his review of the financial model filed under seal leads him to conclude that the negotiated prices in the Agreement should generate sufficient revenues to cover costs, and thereby satisfy the requirements of section 3633(a). *Id.*

III. COMMISSION ANALYSIS

Scope and nature of review. The Commission's responsibilities in this case are to ensure that the new contract (1) is functionally equivalent to the baseline agreement;

⁵ Public Representative Comments on Postal Service Notice of Filing an Additional Global Expedited Package Services 3 Negotiated Service Agreement, September 21, 2012 (PR Comments).

and (2) satisfies the requirements of 39 U.S.C. § 3633 and applicable Commission rules.

Functional equivalence. The Commission has reviewed the Notice, supporting financial analyses provided under seal, and the PR Comments.⁶ The Commission finds that the instant Agreement and the baseline agreement are similar and that the differences between them do not foreclose a finding of functional equivalency. It therefore concludes that the new Agreement may be included in the GEPS 3 product.

Section 3633(a) considerations. The Commission finds that the financial data the Postal Service has filed support a conclusion that the prices for the Agreement satisfy the three criteria of 39 U.S.C. § 3633(a). Specifically, the Agreement should not result in competitive products being subsidized by market dominant products, in compliance with 39 U.S.C. § 3633(a)(1), and should cover its attributable costs, as required by 39 U.S.C. § 3633(a)(2). In addition, it should have a positive effect on competitive products' contribution to institutional costs, consistent with 39 U.S.C. § 3633(a)(3). Accordingly, a review of the Agreement indicates that it appears to be consistent with the provisions applicable to rates for competitive products.

Follow-up submissions. The Postal Service shall promptly notify the Commission if the effective date of the Agreement differs from the anticipated effective date. The Postal Service shall promptly inform the Commission if the Agreement is terminated by either party prior to the expiration of the scheduled one-year term. In addition, within 30 days of the termination of the Agreement, the Postal Service shall file costs, volumes, and revenues associated with the Agreement, disaggregated by weight and country group, including any penalties paid.

⁶ There was no opposition to the Postal Service's application for non-public treatment of materials identified in its Notice.

It is ordered:

1. The Agreement filed in Docket No. CP2012-56 is included within the Global Expedited Package Services 3 (MC2010-28) product.
2. The Postal Service shall promptly notify the Commission if the effective date of the Agreement filed in Docket No. CP2012-56 differs from the date identified in the Postal Service's September 11, 2012 Notice.
3. The Postal Service shall promptly notify the Commission if the Agreement is terminated by either party prior to the scheduled expiration date.
4. Within 30 days of the termination of the Agreement filed in Docket No. CP2012-56, the Postal Service shall file costs, volumes, and revenues associated with the Agreement, disaggregated by weight and country group, including any penalties paid.

By the Commission.

Ruth Ann Abrams
Acting Secretary